

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

**ORDER DISMISSING CASE;
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH;
NOTIFYING ERBY OF APPELLATE FILING FEE; AND
RECOMMENDING THIS DISMISSAL BE TREATED AS A STRIKE UNDER
§ 28 U.S.C. 1915(g)**

On December 12, 2022, Plaintiff Richard Erby filed a *pro se* complaint under 42 U.S.C. § 1983 (ECF No. 1) and a motion for leave to proceed *in forma pauperis* (ECF No. 2). When Erby filed the complaint, he was confined at the Shelby County Criminal Justice Center (the “SCCJC”), in Memphis, Tennessee. (ECF No. 1 at PageID 2.) On December 14, 2022, the Court granted leave to proceed *in forma pauperis*. (ECF No. 4.) On May 11, 2023, the Court entered an Order that: (1) consolidated the complaints in Case Nos. 22-2848, 22-2849, 22-2850, and 22-2878 as the “Consolidated Complaint”; (2) dismissed the Consolidated Complaint without prejudice; and (3) directed Erby to file an amended complaint. (ECF No. 5 (the “Screening Order”).) Erby’s deadline to amend was Thursday, June 1, 2023. (See *id.* at PageID 43.)

Erby has not filed an amended complaint and has not sought an extension of time to do so.

For this reason, and for the reasons discussed in the Screening Order, the Court DISMISSES this case with prejudice in its entirety. Judgment will be entered in accordance with that prior Order.

For § 1915(g) analysis of Erby's future filings, if any, the Court recommends that the dismissal of this case be treated as a strike pursuant to § 1915(g). *See Simons v. Washington*, No. 20-1406, 2021 WL 1727619, at *1 (6th Cir. May 3, 2021). *See also* ECF No. 5 at PageID 43 (recommending that a dismissal of this case for Erby's failure to timely amend be treated as a strike pursuant to § 1915(g).)

Pursuant to Federal Rule of Appellate Procedure 24(a) and 28 U.S.C. § 1915(a)(3), it is CERTIFIED that any appeal in this matter by Erby would not be taken in good faith. If Erby nevertheless chooses to file a notice of appeal, Erby must either (1) pay the entire \$505 appellate filing fee or, if Erby is confined at that time, (2) submit a new *in forma pauperis* affidavit and a current, certified copy of Erby's inmate trust account statement for the last six months, in compliance with 28 U.S.C. §§ 1915(a)-(b).

IT IS SO ORDERED, this 6th day of July, 2023.

/s/ *Samuel H. Mays, Jr.*
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE